

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 11

CARAUSTAR INDUSTRIAL AND CONSUMER
PRODUCTS GROUP, INC.¹
Employer

and

TOMMY LANCE, an Individual

Petitioner

Case No. 11-RD-675

and

UNITE HERE and its LOCAL UNION No. 1752²
Union

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Employer, Caraustar Industrial and Consumer Products Group, Inc., is a Delaware corporation with a facility located in Asheville, North Carolina, where it is engaged in the business of cutting and providing cores (paper board tubes) to four local businesses. UNITE HERE and its Local Union No. 1752, currently represents a bargaining unit comprised of all production and maintenance employees employed by the Employer at its Asheville, North Carolina facility, excluding office clerical employees, guards and supervisors as defined by the Act. The Petitioner, Tommy Lance, filed this petition under Section 9(c) of the National Labor Relations Act seeking to decertify the Union as the collective-bargaining representative for the

¹ The Employer's name appears as amended at hearing. ²
The Union's name appears as amended at hearing.

above bargaining unit. A hearing officer of the Board held a hearing, and the Employer and the Union filed briefs with the undersigned.³

As evidenced at the hearing and in the briefs of the Employer and the Union, the sole issue is whether the plant lead person is a supervisor within the meaning of Section 2(11) of the Act. The Petitioner, who is the plant lead, and the Employer contend that the plant lead is an employee within the meaning of the Act. The Union asserted at hearing that the plant lead has not historically been represented by the Union, does not share a community of interest with unit employees, and is a supervisor within the meaning of Section 2(11) of the Act. On brief, the Union relied solely on its argument that Petitioner was a Section 2(11) supervisor.

I have considered the evidence and the arguments presented by the parties on the issue. As discussed below, I have concluded that the plant lead has historically been included in the bargaining unit and is not a supervisor within the meaning of Section 2(11) of the Act. Accordingly, I shall direct an election in the unit described below. To provide a context for my discussion of this issue, I will first provide an overview of the collective bargaining history between the Employer and the Union and an overview of the Employer's operation. I will then provide my analysis, including a detailed discussion of the plant lead's job duties and the lack of supervisory indicia.

I. Collective Bargaining History

In 1968, the Union of Needletrades, Industrial and Textile Employees, AFL-CIO-CLC and its Local Union No. 1752 was certified as the exclusive bargaining agent in a unit consisting of all production and maintenance employees of Smurfit-Stone Container Corporation Industrial

³The Petitioner did not file a Brief.

Packaging Division (Smurfit-Stone), the predecessor to the Employer, in a plant in Hendersonville, North Carolina.⁴ The unit specifically included all production and maintenance employees, including over-the-road truck drivers and janitors; but excluded the product development engineer, guards and supervisors as defined in the Act. The parties negotiated and executed successive bargaining agreements, the most recent of which was effective by its terms during the period October 12, 2000 through October 14, 2005. The current Employer purchased Smurfit-Stone in October 2002; recognized the Union as the collective bargaining representative of its employees; and adopted the collective bargaining agreement with certain modifications to the healthcare benefits, pension plan, employee savings plan, and the alcohol and drug policy.

Following its purchase of Smurfit-Stone, the Employer made the decision to downsize its operations by ceasing its manufacturing operation and retaining only its core cutting operations. The Employer and the Union then negotiated over the downsizing and, following those negotiations, the Employer laid off approximately two-thirds of its 67 employees. The Employer retained approximately 20 bargaining unit employees, including the plant lead, lead employees, and recutter operators. According to the testimony of the former Union President, the Union negotiated over the specific jobs that would be retained and the identity of the specific individuals who would fill the retained job positions. The Union negotiated to fill the position of plant lead, four lead employee positions, and the operator positions. The position of plant lead was not posted for bidding, but the parties agreed that employee Tommy Lance would hold the position of plant lead based upon his seniority and former position of Finishing lead. The Union and the Employer agreed that the four most senior employees who had ever held a lead position prior to the downsizing would hold the current four lead positions, and that the employees who

⁴The certified union at that time was predecessor to the Union here.

had held an operator's position at any time would be given the operator's position by seniority. The Employer also retained two salaried non-bargaining unit employees: (1) the production manager, who subsequently became the plant manager, and (2) the office manager.

Around this same time, the Employer moved the remaining core cutting operation to a smaller facility in Asheville, North Carolina. The smaller facility includes an office area which contains the offices of the plant manager, the office manager, and the plant lead. Directly adjacent to the office area is a second office area with an office that is shared by the lead employees and a shipping office. The production floor contains a cutting area, a drying oven, and a shipping/receiving and staging area. The smaller facility is approximately 65,000 square feet smaller than the Hendersonville facility.

In June 2003, the Employer and the Union negotiated and agreed to an increase of the wage rate for the plant lead employee. Notwithstanding testimony from the then-Local Union President confirming that the Union and the Employer negotiated and agreed to the wage increase, the International Union representative denies knowledge of the negotiations and the increase.

II. Overview of the Operation

The Employer is engaged in the cutting of master length cores (paper tubes) into specified sizes for four customers including, Blue Ridge Paper (Blue Ridge), Kimberly-Clark Corporation (Kimberly-Clark), Passion A-A1 Can, and Metromart Seamix. The Employer currently employs fourteen hourly-paid employees, and two salaried employees including the plant manager and the office manager. The operation is divided into three departments, including Finishing, Pre-cut, and Maintenance.

The Finishing Department employees cut cores for Kimberly-Clark. The Finishing Department is comprised of the plant lead employee and four operators. Finishing Department employees work Monday through Friday, 7:00 a.m. to 3:30 p.m. The Finishing Department receives orders from Kimberly-Clark, pulls the stock, cuts the cores, stacks the cores on dollies, shrink wraps and labels the order, prepares invoices, loads the cores on a truck, and delivers the cores to the customer. The plant lead employee in the Finishing Department is responsible for insuring that the cores contain the correct moisture level and that they are cut and shipped in the correct size, diameter, length, and count as specified by Kimberly-Clark.

The Pre-cut Department cuts cores for Blue Ridge. This department has four lead employees and four operators. Pre-cut Department employees work on 12-hour crews consisting of one lead employee, one operator, and one temporary employee. Each crew works a 12-hour swing shift from 5:30 a.m. to 5:30 p.m. or 5:30 p.m. to 5:30 a.m. seven days per week. The Pre-cut Department employees receive orders from Blue Ridge, pull the stock, cut the cores, stack the cores on dollies, shrink wrap and label the order, prepare invoices, load the cores on a truck, and deliver the cores to the customer. The lead employee on each of the 12-hour Pre-cut crews is responsible for insuring that the cores contain the correct moisture level and that they are cut and shipped in the correct size, diameter, length, and count as specified by Blue Ridge.

The Maintenance Department has one employee who works Monday through Friday, 7:00 a.m. to 3:30 p.m. The maintenance employee sets up and repairs the machinery, and packs and drives a truck.

All employees report directly to the plant manager.

III. STATUS OF THE PLANT LEAD POSITION

Before examining the specific duties and authority of the plant lead employee, I will briefly review the requirements for establishing supervisory status. Section 2(11) of the Act defines the term supervisor as “any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.” Supervisory status under the Act is determined by an individual's duties not by his or her title or job classification. *Demco New York Corp.*, 337 NLRB 850, 855 (2002). To meet the definition, a person needs to possess only one of the 12 specific criteria listed, or the authority to effectively recommend such action. *Ohio Power Co., v. NLRB*, 176 F. 2d 385 (6th Cir. 1949), cert. denied 338 U. S. 899 (1949). The exercise of one of the specified criteria or the authority to effectively recommend such action must involve the use of independent judgment. *Harborside Healthcare, Inc.* 330 NLRB 1334 (2000). The use of independent judgment is not exercised in a routine or clerical manner. *HS Lordships*, 274 NLRB 1167, 1168 (1985) citing *Valley Mart Supermarkets*, 264 NLRB 156, 158 (1983). Mere inferences or conclusory statements without detailed, specific evidence of independent judgment are insufficient to establish supervisory authority. *Sears, Roebuck, & Co.*, 304 NLRB 193 (1991).

When the possession of any of the specified criteria is not conclusively established, or “in borderline cases,” the Board looks to the well-established secondary indicia. *Monarch Federal Savings & Loan*, 237 NLRB 844, 845(1978). “However, when there is no evidence that an individual possess any of the several primary indicia for statutory status enumerated in Section

2(11) of the Act, the secondary indicia are insufficient by themselves to establish statutory supervisory status.” *J. C. Brock Corp.* 314 NLRB 157, 159 (1994); *St. Alphonsus Hospital*, 261 NLRB 620, 626 (1982).

The burden of proving supervisory status lies with the party asserting that such status exists, and the lack of evidence is construed against the party asserting supervisory status. *Kentucky River Community Care, Inc.* 532 U. S. 706, 711-712 (2001); *Pine Brooks Care Center*, 332 NLRB 740 (1996); *Michigan Masonic Home*, 332 NLRB 1409 (2000). The Board has frequently warned against construing supervisory status too broadly because an employee deemed to be a supervisor loses the protection of the Act. See, e.g. *Vencor Hospital-Los Angeles*, 328 NLRB 1136, 1138 (1999); *Bozeman Deaconess Hospital*, 322 NLRB 1107, 1114 (1997). Where there is inconclusive or conflicting evidence on specific indicia of supervisory authority, the Board will find that supervisory status has not been established with respect to those criteria. See *J. C. Brock Corp.*, 314 NLRB 157 (1994); *St. Alphonsus Hospital*, 261 NLRB 620 (1982).

With regard to whether the plant lead possess any of the twelve criteria listed in Section 2(11), there is no evidence in the record that the plant lead hires, transfers, suspends, lays off, recalls, promotes, discharges, rewards, adjusts employees’ grievances, or effectively recommends such actions.⁵ Accordingly, after providing an overview of the plant lead position, I will discuss the role of the plant lead in responsibly directing, or assign work to employees,

⁵In that regard, the Employer does not perform annual evaluations or grant awards and bonuses. Employees are promoted through job postings. The only overtime opportunities occur when a Pre-cut crew member is absent, and other employees, with the Plant Manager's approval, volunteer to work overtime.

including his role in the posting of notices to employees, and in issuing discipline to employees. I will set forth my analysis of each criteria, including a discussion concerning whether the plant lead exercises the use of independent judgment in these areas. I will then discuss the secondary indicia of supervisory status raised by the Union in its brief.

A. Overview of Plant Lead Position

As set out above, the plant lead is an hourly-paid employee in the Finishing Department who reports directly to the plant manager. The plant lead earns \$1.38 per hour more than other hourly-paid employees. He punches a time clock and works the same hours as the four Finishing Department operators. The plant manager verifies the time of the plant lead and of all other hourly employees. The plant lead pays the same health care premium established by the parties' collective bargaining agreement, shares in the same benefits provided to other hourly employees in the parties' collective bargaining agreement, dresses in the same manner as other operators, i.e. blue jeans and tee shirts, and uses the same break room. The plant lead spends a portion of his day working in an office and the remainder of each day working on the plant floor. At the beginning of each shift, the plant lead holds a short safety meeting with the Finishing Department operators in which he discusses the jobs that need to be done, the orders that need to be filled, and the cores that have to be loaded, including the manner in which they will be loaded. He gives the operators the orders he has received from Kimberly-Clark, and the operators choose which orders to complete first. He then returns to the office where he spends 4-5 hours taking orders from Kimberly-Clark over a secured e-mail connection, completing paperwork, and computing the length of the order and the amount of product to go on a pallet. He relays any orders received throughout the morning to the office manager and then to the operators. Each

morning, he copies time from employee time cards onto a master sheet to submit to the plant manager and office manager for approval.

As discussed more fully below, the plant lead places notices to the Finishing and the Precut employees on a glass near the office area and on four occasions has prepared, signed and delivered warnings to employees.⁶ With respect to his duties on the plant floor, the plant lead drives a forklift, loads truck, runs the recutter machine, and helps on the floor in any way needed. In addition to his office and plant floor duties, the plant lead spends 2-4 hours per week performing inventories at Kimberly-Clark.

In addition to his daily duties, the plant lead fills in and answers customer complaints for the plant manager when the manager is on vacation or away from the plant for more than 1-2 days. When the plant manager is out of the plant on routine visits to Blue Ridge or KimberlyClark, which is less than 10% of the time, no one is officially in charge because the plant manager is not far from the plant and he always has his cell phone with him. The same holds true when the plant manager attends quarterly division meetings. Two to three times per month, an employee on the 12-hour crew will call the plant lead at home to ask a work-related question, such as how to calculate a 300 millimeter core; how to calculate the number of cores to place on a particular pallet; or how to calculate the number of cores to place on a particular dolly.

B. Responsible Direction and Assignment of Work

As noted above, one of the plant lead's functions involves the posting of notices to

⁶The Union, in its brief refers to the area where notices were posted a "glass case." However, the evidence fails to establish that notices were placed in a glass case. The record refers to notices being posted on a glass located between offices.

employees. The Union asserts in its brief that his posting of notices is an indicium of supervisory status in that it amounts to non-routine, responsible direction of employees using independent judgment. I find that the postings made by the plant lead were either routine postings providing employees with information necessary to perform their jobs or were made under the direction of the plant manager. I conclude, therefore, that this posting of notices does not constitute responsible direction. In support of my conclusion, I shall first discuss the role of the plant lead, in general, in directing the employees in their work; then provide a summary of each of the notices posted by plant lead; and, finally, I will discuss the reasons for the conclusions that the postings are routine and do not reflect responsible direction of work using independent judgment.

The plant lead meets with the four Finishing Department employees each morning. During this meeting he gives the operators the orders that he has received from Kimberly-Clark, and the operators choose the orders that they want to fill. At times, the plant manager will give the plant lead notes containing work assignments to pass on to employees. Based upon the routine and repetitive nature of their tasks, the operators know the order and the length of the core to be run, and which of the core cutting machines to use to fill an order. When employees do not have an order to fill, they know they are supposed to clean the plant. In this regard, they know what has to be done and they perform their duties without being directed to do so.

During the course of his work, the plant lead has posted various notices directed to the Finishing and Pre-cut employees. The record is unclear about exactly where these notices were posted but does refer to “a glass” and a glass window that is located between offices above a desk. With regard to notices directed solely to the 8-hour employees, the plant lead has posted

these notices in the shipping and receiving office. In addition to the notices posted by the plant lead, the plant manager also post notices in the same locations as the plant lead. The Pre-cut lead employees leave notes and notices on the desk in their shared office for employees to read.

The specifics of the notices posted by the plant lead are as follows. On September 19, 2005, the plant lead posted a form entitled “daily finishing report” that he had filled out as an example to show employees how the report should be completed. This report is prepared on a form that was created 35 years ago. The plant lead posted the form in order to ensure that accurate data could be gathered for a time study audit the Employer was conducting. Following the audit, employees continued to use the form and to submit one form per machine per day to the plant lead.

The next notice that the plant lead posted was a handwritten document advising employees of the proper routing for the colored copies of shipping invoices. The notice was posted pursuant to the office manager who, for ease of reading, wanted the white copies instead of pink copies.

The next set of notices posted by the plant lead were sample copies of the forms entitled “pinpoint observation form” and “critical behavior sheet form.” Following a safety training class that had been attended by the plant manager, the plant lead, and other lead employees, the plant lead posted these forms to advise employees who did not attend the class of the type of information that should be contained on the forms.

Another notice posted by plant lead was a document advising employees of the correct manner in which to strap, band, and wrap a particular type of core. The plant lead posted this notice after a few loads of cores were lost because they were not properly wrapped. The purpose

of the notice was to advise employees that they should use the new stretch wrapper, instead of the old wrapper, to wrap particular cores.

The next notice that the plant lead posted contained information to show employees how a particular type of pallet should be packed. The notice also set forth the number of cores that are contained in each row. The plant lead posted this notice so that employees would know how to pack the pallets and to be able to easily pull the correct number of cores to fill the pallet.

The next notice that the plant lead posted was a sample invoice reflecting the information that should be contained on an invoice and on the pallet labels. The plant lead posted this document to ensure accuracy.

The plant lead, at the direction of the plant manager, also posted a notice that instructed employees not to leave dollies in areas where the dollies would interfere with the Shipping Department. This posting also contained a list of measurements for boxes relating to a new job that employees were performing.

The plant lead posted an additional notice to the 12- hour Pre-cut crews asking them to make a copy of any orders or items for which they give credit to the customer and to provide the reason for the credit. He asked that these be placed on his desk because he has to send a report to the customer setting forth the credit issued and the reason for the credit. The plant manager directed the plant lead to post this notice.

The plant lead or the plant manager also posted several notices addressing safety concerns or work procedures including providing directions for removing the plug from certain cores; directions for using the “CLR” machine to avoid injury; and a list of directions to carry

out at the end of each shift, including emptying bags, cleaning, organizing, and the like. Another posting addressed the problem of sending defective dollies to customers.

The plant lead posted a notice dated February 11, 2005, in consultation with the plant manager, advising employees that they could not read books, play cards, or hang out in the office. The notice provides that if employees do not have any cores to cut, they can clean, organize dollies, do paperwork, load waste, and so on. The impetus for the notice came as a result of employees' being observed playing cards and computer games on the workfloor right in front of the plant manager.

The Union in its brief argues that the proper analysis for this issue is found in *First Western Building Services*, 309 NRLB 591 (1992). The Union argues that, unlike the individual who was found not to be a supervisor in *First Western*, the plant lead in the current case posted non-routine directions using independent judgment. In *First Western*, the Administrative Law Judge, with Board approval, found that an employee was not a supervisor because the safety instructions he provided to employees constituted routine communication of standard procedure dictated by established policy. The Judge found that the employee did not possess the authority to responsibly direct other employees as contemplated by Section 2(11) of the Act. *Id.* at 601. The Administrative Law Judge, again with Board approval, stated that although the language of Section 2(11) of the Act lists supervisory powers in the disjunctive...it also contains the conjunctive requirement that the power be exercised with "independent judgment," rather than in a "routine" or "clerical" fashion. *Id.* At 599.

In the present case, although the Union urges that the plant lead exercised independent judgment in posting the notices, an analysis of each notice reveals that, just as in *First Western*,

the notices constituted “routine communication” of established policies and procedures. In this regard, the evidence establishes that the plant lead did not create new forms or devise new policies or procedures which he then conveyed to employees; rather, the notices reiterated established policies and provided routine information needed by employees in order to carry out their job duties. As reflected above, many of the notices posted by plant lead simply provide routine instructions to employees concerning how to correctly complete certain forms, i.e. the daily finishing report, invoices, shipping bills, safety forms and the critical behavior sheet. Other notices reminded employees of the proper way to safely perform their daily tasks. With regard to the notice advising employees that they could not read, play cards or hang out in the office, the plant lead posted this notice with the plant manager’s input after employees had engaged in the very conduct right in front of the plant manager. This posting, therefore, does not reflect the exercise of independent judgment. In sum, the evidence established that the plant lead’s direction and assignment of unit employees is routine or clerical in nature and requires no exercise of independent judgment. See *Fleming Companies, Inc.*, 330 NLRB 277 (1999), citing *McCullough Environmental Services*, 306 NLRB 565(1992) Thus, I find that the plant lead does not responsibly direct, or assign work to employees using independent judgment as contemplated by Section 2(11) of the Act.

C. Discipline or Effectively Recommending Discipline

The Union introduced into evidence four disciplinary action forms that the plant lead signed on the section of the form calling for a supervisor’s signature. The warnings were issued on a form titled “Smurfit-Stone Container Corporation Disciplinary Action and Warning Record.” The plant manager also signed each warning. A review of the circumstances of each warning reveals that the plant manager initiated the discipline in each case and that, although the

plant lead signed each warning in the space designated for “supervisor,” his conduct in regard to the warnings was merely “reporitorial,” which the Board has found insufficient to establish supervisory status. I will discuss each of the four disciplinary actions and then set out my rationale for the conclusion that the plant lead did not have or exercise the authority to discipline or to effectively recommend discipline of employees.

The first warning is dated January 21, 2004, and issued to 12-hour crew lead person Charles Johnson.⁷ The warning states: “Failure to follow instructions from plant lead person (Tommy Lance). Didn’t pick up truck from Ryder, nor clean glue room as instructed.” The warning is signed by the plant lead in the space on the warning designated for signature by a supervisor, and is signed by the plant manager in the space on the warning calling for approval by a superintendent. The circumstances for the warning were as follows: The plant manager made a walk-through of the building and noticed that the work that was supposed to have been completed over the weekend by Pre-cut lead Charles Johnson’s crew was not complete. The plant manager spoke to the plant lead concerning the matter but does not recall the content of their discussions. The plant manager prepared the warning and asked the plant lead to sign it because the plant manager wanted someone else to sign as a witness.

The next warning signed by the plant lead was a second written warning for a major offense issued to Charles Johnson on April 14, 2004, for failing to complete weekend work. The plant lead signed in the area designated for a supervisor’s signature and the plant manager signed

⁷The warnings were prepared on a form titled, “Smurfit-Stone Container Corporation Disciplinary Action and Warning Record.” With regard to signatures on the form, the form provides space for the warning to be signed by a supervisor, noted by a manager, approved by a superintendent and recorded by personnel.

in the area of the warning reflecting that the warning was noted by a manager. The plant lead told the plant manager that Johnson's crew had failed to perform work assigned on surge cores on the weekend. There is no evidence that the plant lead made any recommendations in regard to any discipline for this conduct. The plant manager went to the work floor and saw that the work had not been completed. The plant manager told the plant lead that Johnson, who was the 12-hour crew lead, needed a write-up. The plant manager asked the plant lead to deliver the warning to Johnson.

The next two warnings signed by the plant lead are verbal warnings dated July 26, 2005 issued to employees David Scott and Charles Johnson for not filling out the critical behavior work sheets.⁸ The critical behavior work sheet is a safety check sheet that employees are supposed to complete each day, which the Plant Manager then reviews daily to identify problems. The plant manager testified that the plant lead told him that Scott and Johnson were not completing their critical behavior worksheets, and that thereafter, the plant manager noticed that they had not completed the sheets. The plant manager then told the plant lead that the sheets were mandatory, that they were a part of the procedure, that it was a new program, and that everyone had to complete the sheets. The plant manager then directed the plant lead to give Scott and Johnson verbal warnings/write-ups for failing to fill out the critical behavior work sheets. The plant lead filled out the disciplinary forms, which were marked as a verbal and first warning, and signed them. The plant manager also signed the forms.

In determining whether the plant lead's involvement in the issuance of the above discipline establishes that he is a supervisor within the meaning of the Act, it must be determined

⁸The form bears the title "Smurfit-Stone Container Corporation Disciplinary Action and Warning Record," which is crossed out, with "Caraustar" then handwritten on the form.

whether he, in fact, recommended the discipline using independent judgment or whether his role was merely reportorial. My review of the warnings reveals that he did not recommend any discipline. I, therefore, find that his involvement in the disciplinary process was merely reportorial and does not establish that he is a supervisor within the meaning of the Act. This conclusion is buttressed by recent Board authority.

In *Tree-Free Fiber Co.*, 328 NLRB No. 51 (1999), the Board found that team leaders were not supervisors within the meaning of the Act because they followed the human resources manager's instructions in issuing discipline rather than exercising discretion in making the decision to issue a warning. Factors that the Board will consider in determining whether a person's conduct is merely reportorial or whether the employee is using independent judgment in deciding to issue the discipline includes whether the person had the authority to decide whether an employee's conduct warrants discipline at all; whether the matter was independently investigated by the manager; and whether the person's recommendations are always followed. See *Progressive Transportation Services, Inc.* 340 NLRB No. 126 (2003); See also *Albertsons, Inc.*, 344 NLRB No. 141 slip op. at 12 (2005).

In *Progressive Transportation*, the Board found that, in the absence of an independent investigation by a manager and given the large number of notices showing that a deck lead supervisor's recommendations resulted in discipline, the deck lead supervisor was a supervisor within the meaning of the Act. In contrast, in the present case, the Union introduced only four warnings containing the plant lead's signature. In three of the four warnings, the plant lead reported an incident to the plant manager who investigated the matter before directing the plant lead to either prepare or to deliver a warning to the employee. With regard to the fourth warning, the plant manager discovered that assigned work had not been completed and directed the plant

lead to give the responsible lead a warning. Thus, the evidence failed to establish that the plant lead ever issued discipline on his own initiative and without being directed to do so, or that the plant manager ever directed the plant lead to do so without having first made an independent confirmation that conduct had, in fact, occurred. Moreover, as set out above, the evidence fails to establish that the plant lead ever recommended discipline. Thus, I find that the plant lead's role as a conduit of the plant manager's directives is insufficient to establish that he exercised independent judgment within the meaning of Section 2(11) of the Act. See *Necedah Screw Machine Products*, 323 NLRB 574 (1997) (signatures on a discipline form did not amount to effective recommendation of discipline.).

D. Secondary Indicia

The Union, in its brief, points to at least ten additional indicia of supervisory authority, including its assertions that the plant lead is "second in command" to the plant manager; that the plant lead is referred to as "supervisor" on various company documents such as the warnings discussed above; that the plant lead has an office near the plant manager and the office manager, whereas the hourly lead employees' office is closer to the plant floor; that the plant lead earns \$1.38 more per hour than other hourly employees; that the plant lead is in charge of the facility when the plant manager is on vacation and is available by phone to night shift employees; and that the plant lead reviews time cards. However, in the absence of primary indicia as enumerated in Section 2(11) of the Act, secondary indicia are insufficient to establish supervisory status. *Volair Contractors*, 341 NLRB No. 98, slip op. at 2, fn.8 (2004). It is settled that "secondary indicia of supervisory status . . . are in themselves not controlling." *Bay Area Los Angeles Express*, 275 NLRB 1063, 1080 (1985), quoting *Memphis Furniture Mfg., Co.*, 232 NLRB 1018,

1020 (1977). Accordingly, I find that the Union's proffer of secondary indicia is insufficient to establish that the plant lead is a supervisor within the meaning of the Act.

E. Conclusion

Accordingly, I find that the Union, as the party asserting supervisory status, has not met its burden in proving that the plant lead employee has the authority to carry out any of the functions set forth in Section 2(11) of the Act, or to effectively recommend such functions and utilize independent judgment in the execution of such functions. Therefore, I find that the plant lead employee is not a statutory supervisor and, thus, is appropriately included in the unit herein.

VI. Conclusions and Findings

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the act, and it will effectuate the purposes of the act to assert jurisdiction in this case.
3. The Union involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: All full time and regular part-time production and maintenance employees, including the plant lead employee, employed by the Employer at its Asheville, North Carolina facility; excluding office clerical employees, and professional employees, guards, and supervisors as defined in the Act. **VI.**

Direction of Election

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by UNITE HERE and its Local Union No. 1752. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U. S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 4035 University Blvd., Suite 200, P. O. Box 11467, Winston-Salem, NC 27116-1467 on or before November 14, 2005. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper

objections are filed. The list may be submitted by facsimile transmission at 336/631-5210.

Since the list will be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need to be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

VI. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th St. N. W. Washington, DC 20570 and received by the Board in Washington by **November 18, 2005**. The request may not be filed by facsimile.

Dated at Winston-Salem, North Carolina, on the ^{4th} day of November 2005. /s/

Willie L. Clark, Jr.

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